



California Notice Provisions for At Risk Properties

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OVERVIEW

Purpose of Provisions

- To provide tenants and public agencies with notice that an owner is intending to take an action that results in terminating rent restrictions
- To provide prospective preservation buyers with an opportunity to make an offer to purchase and to match other offers

Changes from Previous Law

- Notice Provisions
 - Extends existing law from 9 months notice to 12 months notice (conforms to Federal law on Section 8 contract terminations)
 - Requires 2nd notice at 6 months with more specific information
 - Expands definition to include decision to terminate rental restrictions, including Sec. 42 (tax credit units)
- Option to Make Offer to Purchase Provisions
 - Allows qualified entities who agree to continue restrictions to exclusively make offers for 180 days from date of notice
 - Includes for-profits as qualified entities if meet certain conditions
 - Owners do not have to accept offers
 - Gives qualified entities opportunity to match other offers for next 180 days

Who is Covered?

- All Section 8 projects including:
 - New construction/Substantial rehab
 - Mod Rehab
 - Property Disposition
 - LMSA
 - Any other project-based assistance
- Section 221(d)(3) BMIR (below market mortgage insurance)
- Section 236 (below market mortgage insurance)
- Section 202 (elderly and disabled)
- Rent Supplement
- Section 515 (Farmer's Home)
- Section 42 (tax credits)

NOTICE REQUIREMENTS – Section 65863.10 of Govt. Code

Overview

- 2 notices required: at 12 months and 6 months
- Notice must be given prior to:
 - Termination of subsidy contract
 - Termination of rental restrictions
 - Prepayment of assisted mortgage

First Notice

- When?
 - Must be sent 12 months prior to termination or prepayment
- To Whom?
 - Each household in project
 - Affected Public Entities:
 - Mayor or Chair of Board of Supervisors
 - Public Housing Authority
 - HCD
- Contents:
 - Statement that intend to discontinue subsidy contract restrictions or prepay assisted mortgage
 - Anticipated date of termination/prepayment and identity of federal program
 - Statement that proposed action will have effect of removing restrictions
 - Statement that property may remain rent restricted if owner chooses
 - Statement that governmental assistance (vouchers) may be provided
 - Statement that a 2nd notice will be sent (in approximately 6 months), including any rent changes
 - Statement of notice of opportunity to submit an offer to purchase (Federally required notice for Sec. 8 terminations will suffice for all requirements except for opportunity to submit offer to purchase.)

Second Notice

- When?
 - Must be sent 6 months prior to termination or prepayment and identity of federal program
- To Whom?
 - Each household in project and Affected Public Entities
- Contents:
 - Anticipated date of termination or prepayment
 - Current rent and anticipated new rent

- Statement that notice is being sent to public entities
- Statement that property may remain restricted if owner chooses
- Statement of owner's intent, if any, to participate in replacement subsidy program
- Name/phone number of locality, PHA, HCD and legal services organization to contact regarding tenants' rights/options and owner's responsibilities
- Additional info to public entities:
 - No. of affected tenants
 - No. of units assisted
 - Type of assistance
 - No. of bedrooms in assisted units
 - No. of units not assisted
 - Age and income of all affected tenants
 - Description of owner's plans, including:
 - Timetable
 - Governmental action required
 - Reason for termination
 - Other contacts being made with governmental agencies or others
 - Copy of federally required notice

Change in Information

- Any time there is a significant change from information in 2nd Notice, owner must re-notify affected tenants and the public entities within 7 business days.
- Significant change includes a change in the date of termination/prepayment or rent to be charged.

No New Information

- Notices do not require the owner to obtain or acquire information not in existing tenant or project records.
- Owner is not liable for inaccuracies.

Other Provisions

- Notices must be sent by first-class mail postage prepaid
- Forms to be approved by HCD (and will be posted on their website)

Remedy for Violations

- Injunctive relief available to
 - Any affected public entity (locality, PHA, HCD)
 - Any tenant residing in project at time notice is provided

Impact of New Notice Provisions

- Better conforms to Federal law
 - Sec. 8: First notice can satisfy fiscal requirements
 - Prepayments: federal notice can be sent with 2nd state notice
- 2 notices give tenants and public agencies more current information
 - Owners often don't know plans at 12 months
 - Owners sometimes file notices to protect options
- Gives public agencies more information regarding who is going to be affected and when
- 2nd notice provides tenants with actual proposed rents so they can assess impact and decide to remain or move

OPTION TO MAKE OFFER TO PURCHASE – Sect. 65863.11 of Govt. Code

Overview

- Owner cannot terminate subsidy contract or prepay mortgage without opportunity to make offer to purchase
- Owner cannot sell if it means discontinuance of use restrictions without giving opportunity to make offer to purchase to qualified entities

Notice of Option to Purchase

- Must be given to all qualified entities on HCD list or who contact owner directly
- At least 12 months prior to sale or termination of restrictions (can be concurrent with Sec. 65833.10 notice)
- Sent by registered or certified mail and posted in project

Option to Purchase Available to Qualified Purchasers

- Tenant association of the development
- Local nonprofits and public agencies
- Regional or national nonprofits and public agencies
- Profit motivated organizations and individuals

Qualified Purchasers Must

- Be capable of managing the facility
- Agree to maintain affordability for at least 30 years or remaining term of assistance
 - Preserve occupancy profile
 - Rents at Sec. 42 levels (60% AMI) deemed in compliance
 - Rents and use restrictions must be recorded in a regulatory agreement
- Must agree to renew subsidies if available - and if sufficient to maintain economic feasibility
- Can remove one or more units to maintain economic feasibility

Exemption

- If owner has accepted an offer to purchase prior to Jan.1, 2001
- Must notify HCD and provide copy of offer

Initial Notice – Contents

- Statement that owner will provide within 15 days to requesting qualified entity:
 - Terms of assumable financing and/or subsidy contract
 - Proposed improvements to be made, if any
 - Monthly operating expenses
 - Capital improvements made within previous 2 years

- Project reserves
- 2 most recent financial and physical inspection reports
- Most recent rent roll and subsidy payments
- Vacancy rate for past 2 years
- Statement that qualified entities have right to purchase
- Statement that all requirements under Section 65863.10 have been satisfied unless this notice is more than 12 months prior to termination

Process for Offers

- Submittal of offers
 - Qualified entities can make offer to purchase after receiving notice
 - Offer must identify type of entity and certify that it is qualified under definition
- For first 180 days, owner can accept offer only from qualified entities
- For next 180 days, owner can accept offer from anyone BUT must give qualified entities that have submitted offers opportunity to match accepted offer

Right of Refusal – 2nd 180-day Period

- If owner accepts offer from non-qualified entity, must notify qualified entities that have made bona fide offers by registered or certified mail
- Qualified entities who have made offers have 30 days from date of notice to meet accepted offer under same terms and conditions (“right of refusal”)
- Exception if non-qualified buyers agrees to restrict as a qualified entity and owner notifies HCD as to how
- Exemptions
 - Eminent domain or publicly-negotiated purchase
 - Foreclosure
 - Gift
 - Inheritance
 - Financial emergency (owner must certify)

Sale to Non-qualified Entity

- Owner must certify that all provisions of this section have been met
- Certification must be recorded

Responsibilities of HCD

- Maintain form summarizing rights and obligations of this section
- Maintain list of qualified entities
- Send list of qualified entities to owners when receive 12- month notice of termination or prepay
 - If fail, owner only has to send Opportunity to Purchase notice on request and post in project

Remedy for Violations

- Enforcement in law or in equity by any qualified entity

Other Provisions

- Not preemptive of federal requirements
- Owner can rely on statement of qualified entity that it is one
 - If not and owner has no knowledge, no claim against owner

Sunset

- Both sections sunset on January 1, 2011 unless extended

Impact of New Offer to Purchase Provisions

- Provides clearer process and timetable
 - Same treatment for tenant association, nonprofit and for-profit qualified entities
- Provides purchasers with sufficient information to make offer
- Covers sales prior to 12 months before termination/prepay